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December 11, 2002

William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Petition of the Palau National Communications Corp.,
CC Docket No. 96-45**

Dear Mr. Maher:

I am writing on behalf of the Palau National Communications Corp. ("PNCC") to thank you and Ms. Matthey for our thoughtful and productive meeting last week. I also write to re-emphasize the national security imperatives presented by PNCC's petition, and to provide further legal analysis regarding the Commission's jurisdiction to grant the petition and to enable PNCC to receive universal service support.

First, granting this petition will advance the U.S. national security interest in important ways, particularly given Palau's unique relationship with the U.S., the U.S. commitment to promote the economic development of Palau, and Palau's significant contributions to the war on terrorism. President Tommy E. Remengesau, Jr., of the Republic of Palau met on Monday, December 9, 2002 in Washington, D.C., with James A. Kelly, Assistant Secretary of State for East Asian and Pacific Affairs; David A. Gross, Deputy Assistant Secretary of State for International Communication and Information Policy; David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs; and other high-ranking U.S. officials. During that meeting, Kelly, Gross, Cohen, and the others assured President Remengesau that, as stated in the State Department and Interior Department letters to Chairman Powell, the Administration strongly favors grant of the petition. They also pledged their best efforts to ensure that the Commission fully appreciates the importance of this matter to the foreign policy and national security interests of the United States.

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Second, it is important to keep in mind that Palau, as a Freely Associated State, has an intermediate legal status that is in between absolute independence and integration as U.S. territories. Under the Compact of Free Association between Palau and the U.S. ("Compact"), Palau is treated as independent for some purposes, but continues to be treated as a territory of the United States for other purposes specified in the Compact, including U.S. military operations, a variety of civilian federal programs, and telecommunications regulation (provided that certain conditions are met).

Congress, in enacting the Compact, understood – and made it clear in the legislative history – that Section 131(a)(2) of the Compact "extends Federal Communications Commission jurisdiction to Palau" with respect to U.S. common carrier operations. Senate Rept. No. 99-403, P.L. 99-658, at 38 (emphasis added). This provision is most assuredly *not* a "dead letter" – as Congress explicitly recognized, it confers additional jurisdiction upon the FCC, and directs the Commission to construe the Communications Act of 1934, as amended ("Act"), in conjunction with the Compact. Congress also made it clear in the legislative history that "[u]nder this arrangement, Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers." *Id* (emphasis added).

The term "the Nation" in Section 254(b)(3) is not a defined term in the Act, but it stands to reason that it has the same meaning as the term "United States," which is defined in Section 153(42). Congress directed the Commission to treat Palau as "included in the United States telecommunications system" for common carrier regulatory purposes. If, under the Compact, Palau is to be treated as "included in the United States" for purposes of telecommunications regulation, the clear implication is that it is also to be treated as included in "the Nation" for purposes of applying Section 254 to PNCC.

Finally, PNCC's request is unique and will not set a precedent for any other areas – one might say it is the purplest of "purple cows." Apart from Palau, the other two Freely Associated States (the Marshall Islands and the Federated States of Micronesia) with provisions in their Compacts with the United States similar to Section 131 of the Palau Compact have exercised their rights to permanently "opt out" of the provision permitting FCC regulation. And the

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estimated annual cost of \$6.5 million amounts to only about one-tenth of one percent of the total universal service fund, which means that granting PNCC's request will not significantly impose on the fund.

I appreciate your assistance with the expeditious processing of the PNCC petition. Of course, if you or your colleagues have any further questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, reading "David Sieradzki". The signature is written in a cursive, flowing style.

David L. Sieradzki
Counsel for the Palau National
Communications Corp.

cc: Assistant Secretary James A. Kelly
Ambassador David A. Gross
Deputy Assistant Secretary David B. Cohen
Bryan Tramont
Christopher Libertelli
Carol Matthey
Sharon Webber
Marlene Dortch